



11.3

DOWNTOWN ENTERPRISE DEPT.
DEVELOPMENT GROUP

**CITY OF SACRAMENTO
CALIFORNIA**

915 I STREET, ROOM 301
SACRAMENTO, CA 95814

916-264-7223
FAX 916-264-8161

APPROVED
BY THE CITY COUNCIL

September 3, 1998

SEP 15 1998

OFFICE OF THE
CITY CLERK

CO98-146

City Council
Sacramento, California

Honorable Members in Session:

SUBJECT: Approval of Phase 1 of Waterfront Restaurant Improvements – Site A - Driving Piles

LOCATION/COUNCIL DISTRICT: Old Sacramento, District 1

RECOMMENDATION

Staff recommends that City Council approve the following by resolution:

- Approve Phase 1 of Waterfront Restaurant Improvements-- Site A – Driving of Piles in preparation for tenant improvements by a private developer.
- Allocate \$808,034 in Developer Assistance Funds to a new City Capital Improvement Project (XXX-XXX-XXXX) for predevelopment activities, mitigation and to construct piles for Waterfront Restaurant- Site A;
- Suspend formal competitive bidding and authorize the City Manager to award a construction contract to John F. Otto Construction for \$808,034 for Phase 1 Waterfront Restaurant Improvements – Site A.

CONTACT PERSON: Michelle Nelson, Senior Management Analyst, 264-7064

FOR COUNCIL MEETING OF: September 15, 1998

SUMMARY

This report provides an update on restaurant projects proposed for the Old Sacramento waterfront area. To comply with certain permitting restrictions and to expedite construction within the development window for this year, this report recommends that the City allocate Developer Assistance Funds, dedicated to the restaurant projects, in advance of negotiated lease

agreements, to commence pile-driving activity for the restaurant proposed on Site A (Attachment 1).

BACKGROUND

- On January 27, 1998, the City Council authorized staff to enter into negotiation with Waterfront Management Inc., for development of a new seafood restaurant just north of its existing restaurant, Rio City Café, on the waterfront.
- On March 13, 1998, City Council authorized staff to enter into negotiation with Gordon Biersch Brewing Company for development of a new restaurant/brewery just south of the Rio City Café on the waterfront.
- On July 28, 1998, City Council approved the Mitigated Negative Declaration and the Mitigation Monitoring Plan for both restaurant sites prior to lease authorization to further advance the governmental permit process. .
- The Agency has up to a total of \$2.2 million from Developer Assistance Funds to construct the platforms for both restaurant sites.
- Both restaurants are to be constructed on platforms supported by steel piles driven into the river. The construction activity in the river requires approvals by the Army Corps of Engineers, Reclamation Board, and the Department of Fish and Game.
- Permit approvals are still pending from the Army Corps of Engineers, Reclamation Board and Department of Fish and Game.

Pile Construction

- A limited construction window (August 1 through November 30) exists in which to do in-river construction to mitigate impacts to endangered species.
- The design and engineering for the piles on Site A is complete and plans have gone through building plan check. A building permit is pending other governmental permit approvals.
- Building design and layout are still being developed for the restaurant proposed for Site B. Once complete, the design and engineering for the piles will take approximately two to three weeks to complete before plans can be submitted to the Building Department for plan check for an additional three-week turnaround.
- Negotiations are ongoing with both development teams, however, final agreements may not be reached until after the critical deadline for commencing construction of the piles to meet the construction window.
- Staff has informed Waterfront Management Inc. that pile construction for its proposed restaurant (Site B) is unlikely by the November 30 cutoff for in-river construction this year.

- Governmental permits issued for the project are expected to be valid for one year only. Staff recommends proceeding with the pile driving activity for Site A at this time and returning to City Council for approval of Site B pile driving for August of next year.
- There are no guarantees that permit extensions or future permit approvals will be granted for these projects.
- John F. Otto was originally selected by both restaurant teams to provide coordinated construction management services for both projects. The City has also utilized John F. Otto, under a consultant contract, to coordinate the various engineering studies required for predevelopment and permit processing.
- Utilizing the traditional formal bid process would require completion of formal bid documents, which would significantly delay completion of this phase of the project.
- Staff recommendation is to continue to utilize John F. Otto for construction of the piles because of the firm's familiarity with the design and engineering of the piles and the short time frame to complete this phase of the project within the construction window.

Project Uncertainties

In proceeding forward with the project as described in the contract document with John F. Otto (**Exhibit A of Attachment 2**) there is some uncertainty associated with existing riverbed and erosion conditions that may warrant reconsideration of the project.

Staff, concurrent with this approval, is investigating the existing conditions of the stability of the riverbank in the area of the project. If the existing bank protection is found to be in good condition, the design and quantity of the rip-rap proposed for the project is adequate. Should there be any indication of erosion or failure of the existing protection system, the time and cost affiliated with repairs and a redesigned protection system would make it impossible to proceed under the current contract.

Staff will report back to Council if there is a reconsideration of the approved contract with John F. Otto.

FINANACIAL CONSIDERATIONS

Funding for predevelopment activities, mitigation and pile driving is available in the Agency's Developer Assistance Funds. Estimated cost for Phase 1 activities is estimated at \$808,034. Agency Funds will be allocated to a new Capital Project XXX-XXX-XXXX entitled Phase 1 Waterfront Restaurant Improvements – Site A.

POLICY CONSIDERATONS

- There are risks associated with constructing piles prior to the execution of negotiated agreements with the developer. If the restaurant deal falls through, the City would not receive a return on its investment until other interested restaurant teams could be identified and agreements signed.

- There is also a risk of not constructing piles now, given the expression of some agencies that future permit approvals are not guaranteed and may come with many restrictions which could further delay waterfront construction for many years.
- Council may have to revisit the approval of this project and contract should existing bank protections systems prove to be ineffective and require major repair and/or redesign.

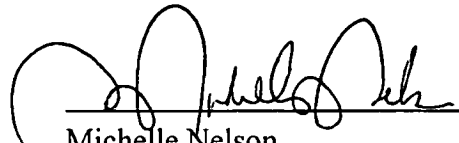
ENVIRONMENTAL CONSIDERATIONS

Mitigated Negative Declarations and Mitigation Monitoring Plans for Site A and Site B were approved by City Council on July 28, 1998. A Notice of Determination will be filed upon approval of the project.

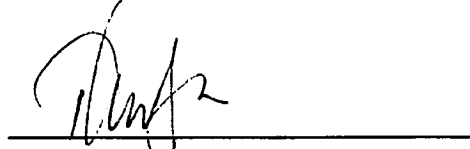
MBE/WBE

John F. Otto Construction is not an MBE/WBE certified company.

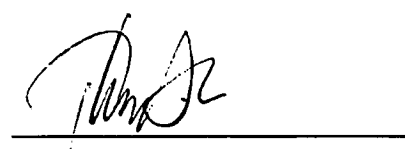
Respectfully submitted:


Michelle Nelson
Senior Management Analyst

RECOMMENDATION APPROVED:


William H. Edgar
City Manager

APPROVED:


Thomas V. Lee
Deputy City Manager

APPROVED
BY THE CITY COUNCIL

SEP 15 1998

OFFICE OF THE
CITY CLERK

RESOLUTION NO. 98-479

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

RESOLUTION APPROVING
PHASE 1 WATERFRONT RESTAURANT IMPROVEMENTS AND
AUTHORIZING THE ALLOCATION OF DEVELOPER ASSISTANCE FUNDS
TO CIP XXX-XXX-XXXX IN THE AMOUNT OF \$808,034 AND
AUTHORIZING THE SUSPENSION OF COMPETITIVE BIDDING AND
AWARDING THE CONSTRUCTION CONTRACT TO
JOHN F. OTTO CONSTRUCTION COMPANY

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

1. Phase 1 Waterfront Restaurant Improvements – Site A – Completion of predevelopment activities, mitigation and pile construction is approved.
2. Developer Assistance Funds from the City are allocated to CIP (XXX-XXX-XXXX) in the amount of \$808,034.
3. Formal competitive bidding is suspended and the contract is awarded to John F. Otto in the amount of \$808,034 for Phase 1 Waterfront Restaurant Improvements – Site A

MAYOR

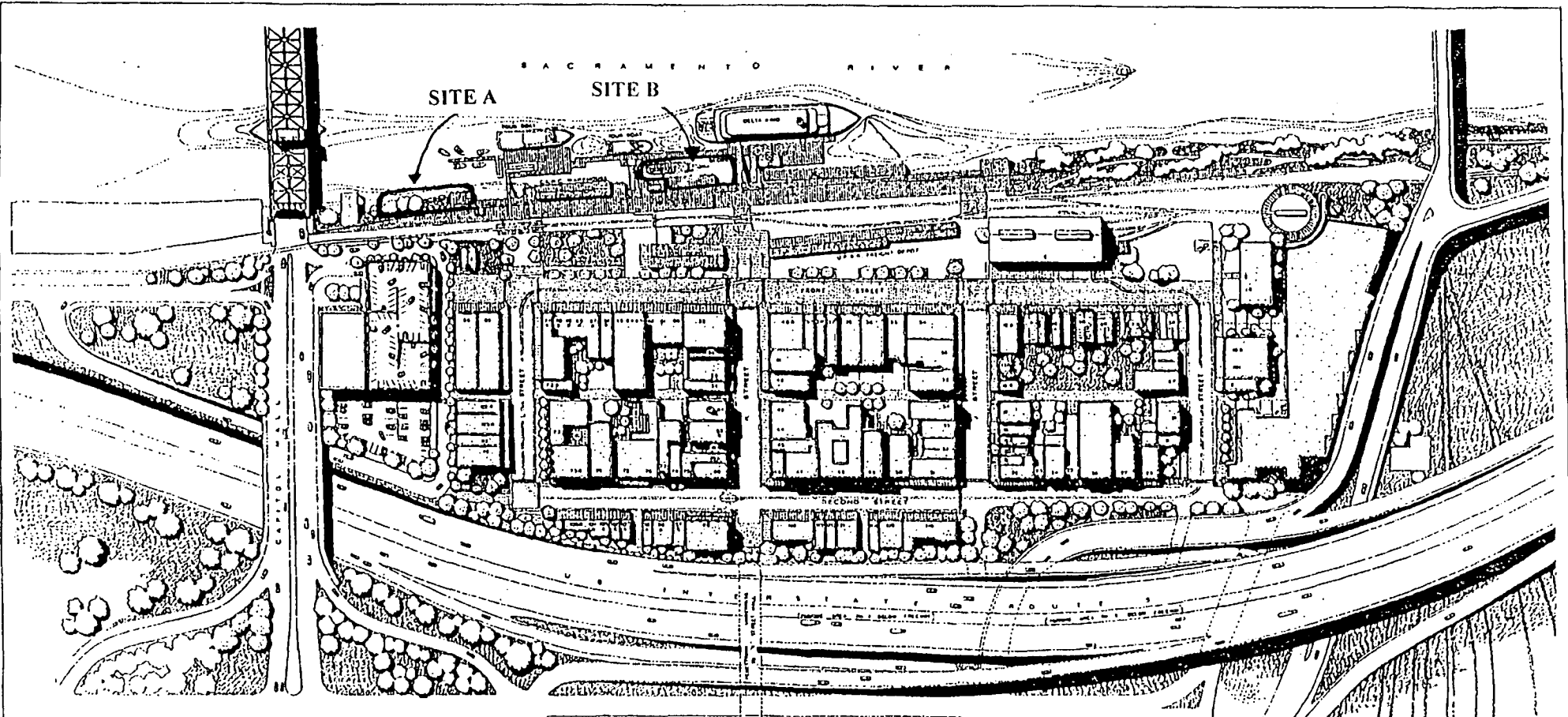
ATTEST:

CITY CLERK

FOR CITY CLERK USE ONLY

RESOLUTION NO.: _____

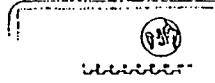
DATE ADOPTED: _____ 15



Key to Building Numbers

NUMBERS IN SQUARE BRACKETS INDICATE BUILDINGS TO BE DEVELOPED IN SITE B OF PHASE TWO RECONSTRUCTION. ALL OTHER BUILDINGS ARE RESTORATION. *IN SITE INDICATED BUILDINGS TO BE DEVELOPED IN SITE B OF PHASE TWO RECONSTRUCTION.

01 CITY HALL & WATER WORKS	16 WASHINGTON SALOON	31 BARRISTER BUILDING	46 WAREHOUSE BUILDING	61 STANBURY & CO	76 FLETCHER HOTEL	91 CHINA BUILDING
02 BRIDGE STREET MALL	17 LORRAINE RESTAURANT	32 LEAFY'S OLD HOUSE	47 LEAFY'S OLD HOUSE	62 PRINCE'S HALL AND BARN	77 EMILE WELLS	92 CHRYSLER BUILDING
03	18 FRANK'S RESTAURANT	33 WYATT EXPRESS HOTEL	48 CITY MARKET	63 ADAMS HOTEL, S. & O.	78 ADAMS HOTEL, S. & O.	93
04	19	34	49	64	79	94
05	20	35	50	65	80	95
06	21	36	51	66	81	96
07	22	37	52	67	82	97
08	23	38	53	68	83	98
09	24	39	54	69	84	99
10	25	40	55	70	85	100
11	26	41	56	71	86	101
12	27	42	57	72	87	102
13	28	43	58	73	88	103
14	29	44	59	74	89	104
15	30	45	60	75	90	105



OLD SACRAMENTO

A REGISTERED NATIONAL HISTORIC LANDMARK

- 1 CALIFORNIA STATE MUSEUM HISTORIC BUILDING
- 2 CITY, COUNTY AND NATIONAL MUSEUM
- 3 1849 WAREHOUSE PREVIOUSLY BRYANT WAREHOUSE
- 4 GENERAL OFFICE PREVIOUSLY BRYANT WAREHOUSE
- 5 STEAMSHIP COMPANY BUILDING
- 6
- 7 HISTORIC STREET CAR STATION
- 8 SOUTH PIERHEAD GARAGE
- 9 HISTORIC SCHOOL BUILDING
- 10 HISTORIC JEWELRY AND SILVER
- 11 RESTAURANT BUILDING IN ADJACENT PLACE AND V. ST. HILL
- 12 BOWLING ALLEY AND EXPRESS INFORMATION AND PLAZA
- 13 LONG BEACH STEAMSHIP BUILDING
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PICTORIAL PLAN

SACRAMENTO HISTORIC AND REDEVELOPMENT SOCIETY

INVESTMENT, INC.

INFORMAL CONTRACT

Water Front Restaurant Project
Phase 1

1. PARTIES

1.1 This Contract, dated for identification as of **September 14, 1998** is made and entered into by and between the City of Sacramento, a municipal corporation ("City"), and **JOHN F. OTTO, INC., 1717 2ND STREET, SACRAMENTO, CA 95814** (Contractor")

The City and the Contractor are referred to herein as the parties to this Contract.

2. DEFINITIONS

2.1 The Contract Documents consist of this Contract and each of the following documents, which are incorporated herein by reference:

- | | |
|--|----------------------------------|
| Invitation to Bid | Workers Compensation Certificate |
| Drawings (if any) | Technical Specifications |
| Contractor's Bid Proposal Form | MBE, WBE Program Statement |
| Certificate(s) of Insurance | Sacramento City Code Chapter 58 |
| MBE/WBE and Subcontractor Participation Verification | |
| Reference Guide for Construction Contracts | |

The table of contents, titles and headings contained within the Contract Documents are solely to facilitate reference to various provisions of the Contract Documents and in no way affect or limit the interpretations of the provisions to which they refer. The Contract represents the entire and integrated Contract between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. Except as may be provided otherwise in this Contract, the Contract may be amended or modified only by written consent of the parties to this Contract.

2.2 Work: The construction required by the Contract Documents, including supervision and labor necessary to produce such construction, and materials and equipment incorporated or to be incorporated in such construction, or required by the Contract Documents..

2.3 Project Manager: "Project Manager" shall mean the designated representative of the City of Sacramento for this project, or the Project Manager's designated representative. The designated Project Manager for this project is:

Michelle Nelson	Project Manager	915 I St., Sacramento, CA 95814	(916) 264-7064
Name	Title	Address	Phone

3. CONTRACT CONTROLS

3.1 In the event a conflict between the terms and conditions as set forth in this Contract and the terms and conditions set forth in other Contract Documents, the terms and conditions set forth in this Contract shall prevail.

4. SCOPE OF WORK

4.1 Contractor shall furnish all tools, equipment, apparatus, facilities, labor, material, supervision and transportation necessary to perform and complete in a workmanlike manner to the satisfaction of the City, all Work required, and in the manner designated in this Contract, and specifically outlined in **Exhibit A** for:

Phase 1 Waterfront Restaurant Improvements – Site A
Completion of Predevelopment, Mitigation and Pile Driving

5. TIME OF COMMENCEMENT AND COMPLETION

5.1 The Notice to Proceed shall be issued following execution of this Contract and the filing by the Contractor of the proof of insurance.

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- 5.2 The Work to be performed under this Contract shall commence on the date specified in the written Notice to Proceed. The entire Work shall be brought to completion in the manner provided for in the Contract Documents on or before **November 30, 1998** from receipt of the Notice to Proceed, unless extensions of time are approved in writing by the City, in accordance with the Contract Documents. The continuous prosecution of Work by the Contractor shall be subject only to excusable delays as defined in the Contract Documents, provided, further, that Contractor complies with Section 11 of this Contract.
- 5.3 The parties agree that the public would suffer substantial damage as the result of failure of the Contractor to finish the Work on time, and that it would be extremely difficult to determine the actual damages. Therefore, the parties agree that failure to complete the Work by the completion date (as extended for excusable delay, if applicable) and in the manner provided for by the Contract Documents shall subject Contractor to Liquidated Damages as hereinafter provided in this Contract. The amount of the Liquidated Damages to be paid by Contractor to the City for failure to complete the entire Work by the completion date (as extended for excusable delay, if applicable) will be **\$410.00** for each calendar day of delay beyond the completion date (as extended for excusable delay, if applicable), continuing until the Work is accepted as complete by the City. Such amount is the actual cash value agreed upon as the loss to City resulting from Contractor's failure to complete the Work on time.
- 5.4 In the event Contractor shall become liable for liquidated damages, City, in addition to all other remedies provided by law, shall have the right to withhold any and all payments which would otherwise be or become due Contractor until the liability of Contractor under this section is finally determined. City shall have the right to use and apply such payments, in whole or in part, to reimburse City for all liquidated damages due or to become due to City. Any remaining balance of such payments shall be paid to Contractor only after discharge in full of all liability incurred by Contractor under this section or otherwise. If the sum so retained by City is not sufficient to discharge all such liabilities of Contractor, Contractor shall continue to remain liable to City until all such liabilities are satisfied in full. No failure by City to withhold any payment as herein before specified shall in any manner be construed to constitute a waiver of any right to liquidated damages or any right to any such sum.
- 5.5 Time is and shall be of the essence is this Contract.

6. CONTRACT AMOUNTS AND PAYMENTS

- 6.1 City agrees to pay, and the Contractor agrees to accept, in full payment for the Work, the sum **\$808,034** which sum is to be paid in accordance with the schedule and in the manner set forth herein and subject to additions, deductions and withholdings as provided in the Contract Documents.
- 6.2 City shall cause payment to be made upon demand of Contractor as follows:
- 6.3 On the first of each month following the commencement of Work, Contractor shall present to the Project Manager a statement showing the amount of labor and materials incorporated in the Work during the preceding month; the Project Manager shall inspect the statement and, if the Project Manager determines that the statement, or any portion thereof is acceptable, the Project Manager shall issue a certificate for the amount estimated to be acceptable.
- 6.4 No inadvertency or error in said monthly application will operate to release Contractor from damages arising from such Work or from enforcement of each and every provision of the Contract Documents, and City will have the right subsequently to correct any error made in any payment.
- 6.5 Contractor shall not be paid for any defective or improper Work.
- 6.6 When, under the provisions of the Contract Documents the City charges any sum of money against Contractor, City will deduct and retain the amount of such charge from the amount of subsequent progress payment, or from any other monies due or that may become due Contractor from City. If, on completion or termination of the Contract, sums due Contractor are insufficient to pay City's charges against Contractor, City will have the right to recover the balance from Contractor or Contractor's surety.
- 6.7 Before issuance of the final monthly payment or certificate, the Contractor, if required, shall submit evidence satisfactory to the City that all payrolls, bills for material and equipment, and all known indebtedness connected with the Contractor's Work has been satisfied.
- 6.8 Statements or invoices shall be mailed to:

City of Sacramento
915 I St. Street
Sacramento, CA 95814
Attn.: Michelle Nelson , Project Manager

- 6.9 The payment of any progress payment, or the acceptance thereof by Contractor, shall not constitute acceptance of the Work or any portion thereof and shall in no way reduce the liability of Contractor to replace unsatisfactory Work or material, although the unsatisfactory character of such Work or material may not have been apparent or detected at the time such payment was made.
- 6.10 In accordance with Public Contract Code §20104.50 the City shall pay Contractor interest on any progress payment which is made by City more than 30 days after City receives an undisputed and properly submitted written payment request. Said interest shall be equal to the rate set forth in CCP§685.010(a), and shall begin to accrue upon the expiration of said 30 day period. Any written request for a progress payment which City determines to be disputed, improper or not suitable for payment for any reason shall be returned to Contractor within 7 days after receipt by City, along with a written statement of the reason or reasons why such request is disputed, improper or not suitable for payment.

7. ACCEPTANCE NOT RELEASE

- 7.1 Contractor shall correct immediately any unsatisfactory or defective Work which may be discovered. Unsatisfactory materials will be rejected, notwithstanding that they may have been overlooked by the proper inspector. If any portion of the Work is covering defective or unsatisfactory Work, the cost of exposing and recovering after correction shall be borne by the Contractor. The inspection of the Work, or any part thereof, shall not relieve Contractor of the obligation to perform satisfactory Work as prescribed by the Contract Documents.
- 7.2 Failure or neglect on the part of City or any of its authorized agents to reject unsatisfactory or defective Work or materials will not be construed to imply an acceptance of such Work or materials if such becomes evident at any time. Such failure shall not be construed as barring City from recovering damages or such a sum of money as may be required to replace or repair the affected portions of the Work whenever City may discover the same.

8. RELEASE

- 8.1 If requested to do so by City, at the time of any payment of undisputed contract amounts, as a condition precedent to such payment, Contractor shall execute and deliver a release in form and substance satisfactory to and containing such exemptions as may be found appropriate by City which shall discharge City, its officers, agents and employees of and from any and all liability, obligations and claims arising or related to such amounts.

9. CITY'S RIGHT TO TAKE POSSESSION OF THE WORK IN WHOLE OR IN PART

- 9.1 The City reserves the right to occupy all or any part of the project prior to completion of the Work. Such occupancy does not constitute acceptance by City of the Work or any portion thereof, nor will it relieve Contractor of responsibility, under Section 7.1, for correcting defective Work or materials. When the project includes several separate buildings and one or more of such buildings is entirely occupied by the City, then on written request from Contractor and issuance of Substantial Completion on the occupied portion, the guarantee period will commence to run from the date of issuance of the Certificate of Substantial Completion for such building or buildings.

10. NO WAIVER OF REMEDIES

- 10.1 Neither the inspection by City or its agents, nor any order or certificate for the payment of money, nor any payment for, nor acceptance of the whole or any part of the Work by City, nor any extensions of time, nor any position taken by City or its agents will operate as a waiver of any provision of the Contract Documents or of any power herein reserved to City or any right to damages herein provided, nor will any waiver of any breach of the Contract Documents be held to be a waiver of any other or subsequent breach. Remedies provided in the Contract Documents shall be taken and construed as cumulative; that is, in addition to each and every other remedy herein provided, and City shall retain any and all equitable and legal remedies available to it.

11. CONTRACTOR TO SERVE NOTICE OF DELAYS

- 11.1 Whenever Contractor foresees any delay in the prosecution of the Work, and in any event, immediately upon occurrence of any delay which Contractor regards as unavoidable, Contractor shall notify City immediately in writing of the probability of the occurrence of such delay and its cause in order that City may take immediate steps to prevent, if possible, occurrence or continuance of the delay, or, if this cannot be done, may determine whether delay is to be considered unavoidable, how long it may continue and to what extent the prosecution and completion of the Work are to be delayed by it. Delays which have occurred in the prosecution and completion of the Work are presumably avoidable delays, except such delays as shall

have been called to the attention of City at or before the time of occurrence and found by City to have been unavoidable. Any delay not called to the attention of City at time of occurrence shall be conclusively presumed avoidable between City and Contractor.

- 11.2 Avoidable delays in prosecution or completion of the Work shall include delays which, in the opinion of City, would have been avoided by exercise of care, prudence, foresight and diligence on the part of Contractor or its Subcontractors. The following shall be deemed to be avoidable delays: (i) delays in prosecution of parts of the Work which may in themselves be unavoidable but do not necessarily prevent or delay prosecution of other parts of the Work or completion of the whole Work within the time specified for completion of the Work; (ii) reasonable loss of time resulting from the necessity of submitting samples of materials and drawings to City for approval and from testing materials, measurements and inspections; and (iii) reasonable interference of other contractors employed by City which do not necessarily prevent completion of the whole Work within time agreed upon. The foregoing list is illustrative only, and is not intended as an exhaustive listing of avoidable delay situations. Under no circumstances will an avoidable delay qualify for an extension of time.
- 11.3 Unavoidable delays in prosecution or completion of the Work shall include delays which, in the opinion of City, result from causes beyond control of Contractor and which could not have been avoided by exercise of care, prudence, foresight and diligence on the part of Contractor or its Subcontractors. Extensions to the completion date due to Contract modifications ordered by City and unforeseeable delays in completion of Work of other contractors employed by City will be considered unavoidable delays insofar as they interfere with Contractor's completion of the Work. War, government regulations, labor disputes, strikes, fires, floods necessitating cessation of Work, other similar action of the elements, inability to obtain materials, equipment or labor, required extra work or other specific reasons as may be further described in the Specifications may constitute an unavoidable delay. Unavoidable delays may constitute sufficient justification for the granting of an extension of time provided the notice requirements of Section 11.1 above have been met. Other than an extension of time, Contractor shall have no claim for any compensation or damage for any unavoidable delay or disruption, including claims relating to changes in the Work extending the completion date, unless it is shown by Contractor, to the satisfaction of the City, that the unavoidable delay or disruption resulted from a work stoppage or suspension caused by the City and that such stoppage or suspension was unforeseeable and unreasonable under the circumstances.
- 11.4 If adverse weather conditions are the basis for a request for an extension of time, such request shall be documented by data substantiating that weather conditions were abnormal for the season and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction. Contractor shall submit such documentation covering each and every day of delay which Contractor claims was caused by adverse weather conditions.
- 11.5 Determination of each day upon which an unavoidable or adverse weather delay occurred shall be made and agreed upon during such day, or as soon thereafter as practicable, by conference between Contractor and City at the job-site. If agreement is not reached, Contractor shall notify City in writing of the cause of delay within ten (10) calendar days. Except in those cases deemed by the City to be so warranted, no determination as to time adjustment shall be made by the City as to any alleged cause of delay until the Work is completed.

12. CHANGES IN THE WORK

- 12.1 The Contractor may be ordered in writing by the Project Manager without invalidating this Contract, to make changes in the Work within the general scope of this Contract consisting of additions, deletions, or other revisions. The Contractor, prior to the commencement of such changed or revised Work, shall submit to the City written copies of any claim for adjustment to the Contract amount and time of completion for such revised Work in accordance with the procedure set forth in the Contract Documents.

13. PROTECTION OF EXISTING FACILITIES

- 13.1 Contractor shall take every precaution to protect all public and private property during the performance of this Contract. Contractor shall be solely responsible for any damage caused to public and private property by Contractor's agents, employees, subcontractors or equipment during the performance of this Contract, and any such damaged property shall be promptly repaired to the condition existing before the damage occurred, or shall be replaced. All costs for such repairs or replacement shall be the sole responsibility of the Contractor.

14. TERMINATION FOR BREACH OF CONTRACT

- 14.1 In addition to any other rights the City may have, if Contractor has not completed the Work on or before the Completion Date as adjusted by change order or any extension of time granted by City, if any, the City may terminate the Contract at any time thereafter. Upon such termination, Contractor shall not be entitled to

receive any compensation for services rendered after such termination and Contractor shall be liable to City for liquidated damages for all periods of time beyond such termination date until the Work is completed.

- 14.2 If Contractor should abandon the Work, or if the Work or any portion of the Work should be sublet or assigned without the consent of City, or if the Project Manager determines that the conditions of the Contract Documents in respect to the rate of progress of the Work are not being fulfilled or any part thereof is unnecessarily delayed, or if Contractor should willfully violate or breach, or fail to execute in good faith, any of the terms or conditions of the Contract Documents, or if Contractor should refuse or fail to supply sufficient properly skilled labor or materials, or fail to make prompt payment to Subcontractors for material or labor, or disregard laws, ordinances or proper instruction or orders of the Project Manager then, notwithstanding any provision to the contrary herein, City may give the Contractor written notification to immediately cure any such breach, or the Contract will be terminated.
- 14.3 In the event that notice is given under Section 14.2., and in the event the breach is not cured, or satisfactory arrangement for correction is not made within ten (10) calendar days from date of such notice, the Contract shall, upon the expiration of said ten (10) calendar days from the date of mailing of the notice, cease and terminate. In the event of termination, City will immediately serve notice thereof upon the Contractor. The City may take over the Work and prosecute the same to completion for the account and at the expense of Contractor, and Contractor shall be liable to City for any excess cost occasioned by the City.
- 14.4 In the event City completes the Work, or causes the Work to be completed, as aforesaid, no payment of any sum will be made to Contractor until the Work is complete. All costs of completing the Work, including, but not limited to, legal expenses, the costs of City forces, extra costs of administration and management incurred by City, either direct or indirect, shall be deducted from any sum then due, or which becomes due, to Contractor from City. If the cost of completing the Work exceeds sums owing to Contractor under the Contract, Contractor shall pay City a sum equal to said difference on demand. In the event City completes the Work and there is a sum remaining due to Contractor after City deducts the aforementioned costs of completing the Work, then City will thereupon pay such sum to Contractor.
- 14.5 No act by the City before the Work is finally accepted including, but not limited to, exercise of other rights under the Contract Documents, actions at law or in equity, extensions of time, payments, claims of liquidated damages, occupation or acceptance of any part of the Work, waiver of any prior breach of the Contract Documents, or failure to take action pursuant to this Article upon the happening of any prior default or breach by Contractor will be construed to be a waiver by, or to stop, the City from acting pursuant to this Article upon any subsequent event, occurrence or failure by Contractor to fulfill the terms and conditions of the Contract Documents. The rights of the City pursuant to this Article are cumulative and in addition to all other rights of City pursuant to the Contract Documents, and at law or in equity.
- 14.6 If Contractor should commence any proceeding under the Bankruptcy Act, or if Contractor should be adjudged as bankrupt, or if Contractor should make any assignment for the benefit of creditors, or if a receiver should be appointed an account of Contractor's insolvency, then the Project Manager may terminate the Contract and City may complete the Work, or cause completion of the Work pursuant to this Section 14.

15. INSURANCE

- 15.1 During the term of this Contract and until final completion and acceptance of the Work required by the Contract Documents, Contractor shall maintain in full force and effect at Contractor's own cost and expense the following insurance coverage:
- 15.2 Contractor shall maintain Worker's Compensation Insurance as specified by Labor Code Section 3700 et seq. In the event Contractor is self-insured, Contractor shall furnish a Certificate of Permission to Self-Insure issued by the Department of Industrial Relations Administration of Self-Insurance.
- 15.3 Contractor shall sign and file with the Division of Risk Management of the City the following certification prior to commencing performance of the Work of the Contract:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of the Code, and I shall comply with such provisions before commencing the performance of the Work of this Contract."

- 15.4 Contractor shall provide sufficient broad coverage to include:
- A. Comprehensive Auto and General Liability Insurance
 - B. Broad Form Property Damage Liability
 - C. Personal Injury Liability

- 15.5 The amount of each policy shall be no less than \$1,000,000 Single Limit per occurrence, issued by an admitted insurer or insurers as defined by the California Insurance Code, providing that the City, its officers, employees and agents are to be named insured under the policy, and the policy shall stipulate that this insurance will operate as primary insurance and that no other insurance effected by City or other named insured will be called on to contribute to a loss covered thereunder.
- 15.6 Contractor shall have City's standard Certificate of Insurance completed and filed with the Division of Risk Management within ten (10) calendar days of receipt of the fully executed Contract. Each policy shall provide that no cancellation, change in coverage or expiration may be effected by the insurance carrier without first giving written notice to City thirty (30) calendar days prior to the effective date of such cancellation, change in coverage or expiration of policy.
- 15.7 If, at any time during the performance of this Contract, Contractor fails to maintain any item of the required insurance in full force and effect, Contractor shall, at Contractor's sole expense, immediately discontinue all Work under the Contract and City will withhold Contract payments due or that become due until notice is received by City that such insurance has been restored in full force and effect and that the premiums therefor have been paid for a period satisfactory to the Division of Risk Management. Additionally, any failure to maintain any item of the required insurance will be sufficient cause for termination of the Contract.

ANY FAILURE TO MAINTAIN ANY ITEM OF THE REQUIRED INSURANCE WILL BE SUFFICIENT CAUSE FOR TERMINATION OF THE CONTRACT BY CITY.

16.0 PERFORMANCE AND PAYMENT BONDS

- 16.1 The successful Bidder shall be required to furnish a Faithful Performance Bond in the amount equal to one hundred percent (100%) of the Contract Price and a Payment Bond in an amount equal to one hundred percent (100%) of the Contract Price. Said bonds shall be secured from a surety company and in a form satisfactory to the City of Sacramento.
- 16.2 Notwithstanding the foregoing, any Contract of less than \$25,000.00, including all alternatives, will not require any Performance and Payment Bonds.

17. GUARANTEE

- 17.1 Except as otherwise expressly provided in the Specifications and excepting only items of routine maintenance, ordinary wear and tear and unusual abuse or neglect, Contractor shall guarantee all Work performed hereunder, together with all supplies, materials and devices of whatsoever nature incorporated in, or attached to the Work or otherwise delivered to City as a part of the Work pursuant to the Contract Documents, to be free of defects of fabrication, installation and materials for a period of one year after the issuance of the Certificate of Substantial Completion by the City. Contractor shall repair or replace such Work or material, together with other Work or material which may be displaced or damaged in so doing, without expense or charge of any nature whatsoever to City.
- 17.2 In the event that Contractor shall fail to comply with the conditions of the foregoing guarantee within five (5) calendar days time, after being notified of the defect in writing, City will have the right, but shall not be obligated to repair, or obtain the repair of, the defect and Contractor shall pay to City on demand all costs and expense of such repair including all staff and administrative (including legal) expenses required to enforce the guarantee. Notwithstanding anything herein to the contrary, in the event that any defect in fabrication, installation or material covered by the foregoing guarantee results in a condition which constitutes an immediate hazard to the health or safety of any person, or any property interest, City will have the right to immediately repair, or cause to be repaired, such defect, and Contractor shall pay to City on demand costs and expense of such repair including all staff and administrative (including legal) expenses required to enforce the guarantee. The foregoing statement relating to hazards to health, safety or property shall be deemed to include either temporary or permanent repairs which may be required as determined in the sole discretion and judgment of City.

18. HOLD HARMLESS AGREEMENT

- 18.1 Contractor shall assume the defense of, and indemnify and save harmless, the City, its officers, employees and agents, and each and every one of them, from and against actions, damages, claims, losses or expenses of every type and description to which they may be subjected or put, by reason of, or resulting from, the performance of the Work, whether upon or off the Work, including the loss of use thereof and caused in whole or in part by any act or omission of the Contractor and/or any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether

or not it is caused in part by a party indemnified hereunder. The foregoing shall include, but not be limited to, any attorney fees reasonably incurred by the City.

18.2 In addition to any other remedy authorized by law, any sum due Contractor under and by virtue of the Contract Documents may be retained by the City until disposition has been made of such suits, actions, or claims for damages.

19. LAWS, PERMITS, FEES AND NOTICES

19.1 Contractor shall keep informed of, observe and comply with and cause agents and employees to observe and comply with prevailing Federal, State, County and City laws, including the payment of all applicable taxes, and rules and regulations made pursuant to said Federal and State Laws, which in any way affect conduct of Work under this Contract. Contractor shall at Contractor's expense, obtain all necessary permits and licenses for excavating or other Work on or off public streets, roads or sidewalks and shall comply with laws in connection therewith. If conflict arises between provisions of the Contract Documents and any such law above referred to, then Contractor shall notify City at once in writing. Contractor, pursuant to Section 18.1. above, shall defend and indemnify the City and any of its officers, agents and employees against any claim or liability arising from or based on the violation of any such law, rule or regulation, whether by Contractor, any Subcontractor or agents or employees of either.

19.2 When any Federal, State or local law, statute, ordinance, regulation or rule is referenced in the Contract Documents, it is intended that any reference to said law, statute, ordinance, regulation or rule is as it may be amended or renumbered in the future.

19.3 If required, contractor shall obtain a "no fee" building permit from the City Building Department. Contractor shall obtain and pay for all other permits and licenses required for the execution of the Work. A Business Operations Tax Certificate shall be obtained from the City Finance Department, Revenue Division prior to issuance of payments.

IN WITNESS WHEREOF, the parties hereto have signed this Contract on the date set forth below their names.

CONTRACTOR

CITY OF SACRAMENTO
A Municipal Corporation

By: _____ By: _____

Date: _____

Federal I.D. No. _____

State I.D. No. _____

City of Sacramento Business Operation Tax Certificate No. _____
(City will not award contract if Certificate Number is missing)

ATTEST:

City Clerk

ORIGINAL APPROVED AS TO FORM

City Attorney

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SEP-8-98 TUE 14:36

EXHIBIT A

1717 Second Street, Sacramento
916-441-6870 ext. 319
Fax: 916-441-6138

John F. Otto, Inc.

Fax

To: Michele	From: David
Fax: 264-8161	Pages: 2
Phone: 264-7064	Date: 09/08/98
Re: Old Sac Projects	CC:

● Comments:

Good Afternoon,

- Please use the following information for completing a contract to cover the balance of the pre-construction services through pile driving.

The contract total would be \$808,034 - see attached breakdown.

- Subject to the following assumptions and allowances which could be addressed in a cover letter or added as an attachment to the contract:

- 1) The staging area on Garden Hwy is being provided by the City. There is no cost figured into the contract amount at this time. The steel pipe and pile driver contracts are predicated on this location.
- 2) The contract includes an allowance of \$5,000 for the EIP mitigation requirement- tree planting. The inspections and reports required are included in the City staff work allowance.
- 3) The contract amount includes the balance of the pre-construction work. The scope of work for the contract therefore covers pre-construction work through the pile driving. (Item #4.1)
- 4) The contract limits the rip-rap work to \$5,000 of design services and 900 ton of rip-rap placed similar to existing.
- 5) The bond cost is included as shown.
- 6) The completion date should be listed as 11/30/98.

Gordon Biersch
Phase I -
Pile Work And
Pre-construction
Contract
9/8/98

Contract Number	Description	Category Totals	Totals	Notes
1	Public Work - Pre-construction		176,879	
	Archeological	8,460	(8,460)	Paid directly by City
	EIP Contract	9,885	(9,885)	Paid directly by City
	Misc. City Staff Work	5,000	(5,000)	Includes mitigation inspections & reports
	Hydraulic Report	10,925		Brd. of Rec. req'nmt - split with other site
	Rip-rap Design	5,000		Allowance for Brd. of Rec. req'nmt
	Geo-Tech	3,400		River work
	Off site Geo-tech	4,500		Off-site, inspections, consultations
	Civil	10,000		Platform & off-sites
	Utility & Off-site Civil	8,000		
	Structural	18,500		Platform design
	Architectural	66,209		Platform & off-sites
	Project Management	27,000		Platform & off-sites - through Sept.
	Existing A&E Contract		(50,000)	Paid directly by City
2	Public Work - Piles		713,612	
	Permits	9,112	(9,112)	Paid directly by City
	GC's & Bond	60,000		
	Site Survey	2,500		
	R & R Floating Dock	10,000		
	Remove Trees	29,000		
	Remove Ruble In Conflict	30,000		
	Supply & Place Rip-Rap	40,000		900 Ton allowance
	Supply Piles	295,000		Pipe, welding, delivery & staging
	Drive Piles	185,000		
	Brace Piles	8,000		
	Mitigation Measures	5,000		Tree replacement allowance
	Pile contract fee	40,000		
	Contract Amount		808,034	Pre-constr. balance & pile work

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